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OLC 71-0700

23 July 1971

MEMORANDUM FOR THE RECORD

SUBJECT: Hebert/Arends Bill to Establish a Commission on
Information Protection and the National Security--
H. R. 9853

1. Representatives Hebert and Arends have cosponsored a bill to establish a "Commission on Information Protection and the National Security." Under the provisions of this bill the Commission would be charged with conducting a continuing study and review of--

"all laws, rules, regulations, executive orders, and directives relating to the designation and use of, access to, and protection of information affecting the national security possessed by the Department of Defense, the Central Intelligence Agency, and the National Security Agency."

The Commission would also concern itself with the adequacy of these laws and regulations in light of the "...need to maintain a free flow of information and the necessity to provide for the security of the United States."

2. Scope

The Commission's studies would include the executive, legislative and judicial branches of the Government with respect to classifying, reclassifying, declassifying and otherwise controlling and protecting information affecting the national security.

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3. Membership

The Commission would be composed of 12 members appointed as follows:

a. Two Members of the Senate appointed by the President pro tempore.

b. Two Members of the House appointed by the Speaker.

c. Four appointed by the President who are present or former Government employees.

d. Four appointed by the Chief Justice of the United States with legal education, training or experience.

4. Powers

The Commission would have the usual authority to take testimony, administer oaths, and issue subpoenas and may secure information from any department or agency necessary to carry out its responsibilities.

5. Reports

The Commission would be required to transmit annual reports to the President and to each House of the Congress and such interim reports as it deems necessary. The reports would cover the Commission's findings, conclusions, and recommendations as to procedures to be taken within the executive branch to protect the secrecy of information affecting the national security and procedures to be followed by the courts in judicial hearings involving information affecting national security. The first report would include such recommendations for legislative and administrative action as the Commission deems advisable.

6. We have discussed this proposal with Mr. Frank Slatinshek, Assistant Chief Counsel, House Armed Services Committee, who drafted the bill. He said there is considerable pressure in the House for action to deal with the problem of inadequate and outdated laws, regulations and

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procedures governing the protection of classified information. It is the object of the sponsors of the bill to put before the Congress a reasonable approach to the subject under adequate controls. They feel that until some action is taken along this line, it will be extremely difficult to prosecute cases like that of Daniel Ellsberg. Consideration was given to having the Armed Services Committee conduct its own study of the problem but it was concluded that in some quarters this would be regarded as a "parochial" approach.

7. The bill was worded to include only the Department of Defense, CIA, and NSA to ensure that it would be referred to the Armed Services Committee. It is quite possible, however, that the scope of the legislation will be expanded later to include the Department of State and other Government agencies. Mr. Slatinshek said it is intended that the Commission's authority extend only to practices and procedures and not to substance. He added that this would be made clear in the legislative history developed in the Committee's hearings. He went on to say that the Committee would obviously want expressions from the Agency on the legislation and would probably want Agency testimony on it in closed hearings. These hearings will be scheduled after the summer recess and Slatinshek expects floor action on the bill in this session of the Congress.


8. Interested Agency offices are being asked for their views.

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